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LEGISLATION

RECEIPT #

Chrono

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Director of Information Services
1205 Ames

EXTENSION

NO.

DIS*369*86

DATE

10 July 1986

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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PENDING

OIS*369*86
10 July 86

MEMORANDUM FOR:

[REDACTED]
Deputy Director for Legislation
Office of Congressional Affairs

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FROM:

[REDACTED]
Director of Information Services

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SUBJECT:

Comments on Proposed Legislative Program
for the 1988 Intelligence Authorization Act

1. Thank you for your memorandum of 27 June soliciting our views on the draft Intelligence Community legislative program for 1988. We have addressed only those proposals affecting OIS or Credit Union equities except where serious legal questions are raised. In this latter category, you may wish to seek specific input from the Office of General Counsel.

2. Proposal 100/1 - 2 would provide penalties for the willful, unauthorized disclosure of classified information by federal employees and others having authorized access to classified information. OIS has an indirect interest in the problem as the focal point for maintaining a record of officially authorized, public disclosures of Agency records (OIS/IPD) and provides substantive assistance to Agency components conducting damage assessments in instances of unauthorized disclosures (OIS/CRD).

I believe we would all agree that except in the context of actual espionage or COMINT information, criminal penalties for unauthorized disclosure of classified information are essentially unavailable. This generalized proposal thus addresses a vital need. Specifically, we could seek to amend 18 USC §798 so as to include "information regarding intelligence sources and methods" or propose a new statute which would emulate 18 USC §799 which makes it a crime to violate or attempt to violate any NSA regulation protecting certain NSA information.

3. Proposal 100/1 - 3 would amend the Right of Financial Privacy Act in order to clarify the Agency's authority to examine the financial records of employees in connections with a determination of their vulnerability to counterintelligence threats. We should support this proposal as a remedy for a demonstrated shortcoming in the Agency's

ability to discover evidence of the vulnerability of employees to damaging influence and/or control by hostile intelligence services. However, the authority of the Agency to exercise such access should be limited to a set of prescribed circumstances, such as an actual CI investigation, rather than routinely and continually reviewing any and all employees financial records. This being the case, I would note that the anti-disclosure provisions of the Act specifically do not apply to requests from "... a Government authority authorized to conduct foreign counteror foreign positive-intelligence activities for purposes of conducting such activities." Thus, where an Agency employee is the object of or otherwise involved in a CI matter, the Agency may currently obtain financial information simply by serving an appropriate certification on the financial institution.

4. Proposal 100/1 - 5 would provide an exemption from the requirement to publish Record Disposal Requests in the Federal Register. We fully concur and support.

5. Proposal 100/1 - 7 would provide certain FOIA relief for the Federal Bureau of Investigation. We concur but believe that the amendment should protect official records on counterterrorism and counterintelligence matters in all Federal agencies and departments. The records of other agencies, particularly concerning counterterrorism, are frequently just as revealing of sensitive matters as FBI records and just as deserving of protections. The CIA and NSA files are not as vulnerable because of the protection of other broader statutes which qualify under FOIA as (b)(3) statutes. It would be prudent, however, to include CIA and NSA in any amendment to avoid the uncertainty that their absence might create.

6. Proposal 100/1 - 8 would provide for access by the FBI and DOD to financial records. Please see our comments on 100/1 - 3.

7. Three other proposals, while not involving OIS equities, raise legal questions which should be more fully addressed by the Office of General Counsel. Specifically, proposal 100/1 - 9 would authorize the Attorney General or his designee to receive tax return information from the IRS regarding individuals that are the subject of a domestic CI investigation. This could raise serious constitutional concerns since the procedure appears to be warrantless. One way to avoid this would be to utilize a FISA-like procedure. The same comments apply to proposal 100/1 - 10. Lastly, with respect to proposal 100/1 - 21, we concur with the caveat that the proposal is too non-specific. Language such as "deal with ... without regard to the provisions of any other law, rule, or regulation" should be clarified.



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OIS/IPD/LSS/10 July 1986

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